

ORIGINAL  
EXCEPTION



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BEFORE THE ARIZONA CORPORATION COMMISSION

MARC SPITZER  
Chairman  
WILLIAM A. MUNDELL  
Commissioner  
JEFF HATCH-MILLER  
Commissioner  
MIKE GLEASON  
Commissioner  
KRISTIN K. MAYES  
Commissioner

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AZ CORP COMMISSION  
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Arizona Corporation Commission

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IN THE MATTER OF THE  
COMPLAINT OF ESCHELON  
TELECOM OF ARIZONA, INC.  
AGAINST QWEST CORPORATION

Docket No.: T-01051B-03-0668

QWEST CORPORATION'S  
EXCEPTIONS TO RECOMMENDED  
OPINION AND ORDER.

I. INTRODUCTION

On September 11, 2003, Eschelon Telecom of Arizona, Inc. ("Eschelon") filed a Complaint ("Complaint") against Qwest Corporation ("Qwest") with the Arizona Corporation Commission ("Commission"). Eschelon alleged that Qwest had violated its statutory duty to permit an opt-in pursuant to Section 252(i) of the Telecommunications Act of 1996 (the "Telecom Act"). Eschelon also pled various other theories that were essentially indistinguishable from its Telecom Act claim, and requested retroactive rate credits. After expedited proceedings established by stipulation,<sup>1</sup> the Administrative Law Judge ("ALJ") issued a Recommended Opinion and Order ("Recommended Order") on April 5, 2004.

Qwest hereby files its Exceptions to the Recommended Order. The Recommended Order erroneously finds that Eschelon made a proper request to opt into a rate contained

<sup>1</sup> On October 6, 2003 Qwest filed a combined motion to dismiss and answer denying the allegations in Eschelon's complaint. Eschelon filed a response to Qwest's motion to dismiss on October 24, 2003, and Qwest filed a reply on November 10, 2003. The parties stipulated to the relevant facts, filed simultaneous briefs on December 11, 2003, and filed simultaneous reply briefs on December 19, 2003. The ALJ heard oral argument on the issues raised by the parties on December 30, 2003.

1 in Qwest's interconnection agreement with McLeodUSA Telecommunications Services,  
2 Inc. ("McLeod"). There is ample evidence in the record, dating from Eschelon's original  
3 letter in October 2002, which shows that while Eschelon was interested in lower rates for  
4 its service, it did not intend to opt into the McLeod amendment. Rather, Eschelon sought  
5 different services and a different termination date than the McLeod amendment. Qwest  
6 responded promptly seeking clarification or negotiations, but Eschelon failed to clarify its  
7 request for over nine months. The Recommended Order would reward Eschelon's  
8 dilatory behavior by giving Eschelon a retroactive credit to cover that nine-month period.

## 9 II. DISCUSSION

10 The Recommended Order correctly notes that Eschelon and McLeod's  
11 interconnection agreements differed in several important ways. Most obviously, the  
12 termination dates and volume commitments were different. Recommended Order at 3,  
13 ¶ 15. In addition, Eschelon's version of UNE-Star included different features at a  
14 different rate. *Id.*, ¶ 16. However, the Recommended Order reaches several conclusions  
15 that are incorrect. Most importantly, the Recommended Order erroneously concludes that  
16 Eschelon made a valid opt-in request as of October 29, 2002. *Id.* at 6-7, ¶ 32. In addition,  
17 the Recommended Order appears to find that Qwest insisted on negotiating over other  
18 terms rather than acting on Eschelon's purported opt-in request. *Id.* at 7, ¶ 33. Finally,  
19 the Recommended Order incorrectly determines that only the termination date was  
20 legitimately related to the amended rate term of McLeod's agreement. *Id.* at 6, ¶¶ 29-32.

### 21 A. Eschelon did not make a proper opt-in request in October 2002.

22 In finding that Eschelon made a proper opt-in request, the Recommended Order  
23 overlooks critical aspects of Eschelon's request that clearly demonstrate Eschelon did not  
24 have the same pricing or service package as McLeod, did not request the same terms and  
25 conditions as McLeod, and did not accept the same termination date as McLeod. Any one  
26 of these three conditions causes an opt-in request to fail; however, the Recommended  
27 Order ignores these flaws in Eschelon's request.

1 In considering this case, the Commission should scrutinize Eschelon's opt-in  
2 request, as that request was the only information Qwest had at the time it made an initial  
3 determination that the request was ambiguous and not a proper opt-in. It would appear  
4 that Eschelon carefully drafted the request to avoid committing to the same terms and  
5 conditions as McLeod, to avoid discussing the pre-existing price difference between  
6 Eschelon's and McLeod's agreements, and to avoid committing to the termination date of  
7 the McLeod amendment. The relevant language of Eschelon's "opt-in" request is as  
8 follows:

9 Eschelon requests to opt-in to page 2 of the amendment to  
10 Attachment 3.2 of the Qwest-McLeod Interconnection Agreement,  
11 consisting of Platform recurring rates that are effective from  
September 20, 2002, until December 31, 2003 (See attached.)

12 Eschelon requests that page 9 of Attachment 3.2 of Eschelon's  
13 Interconnection Agreement Amendment terms with Qwest, dated  
14 November 15, 2000, be amended to add the rates in the attached  
15 page from the McLeod Amendment to the end of the "Platform  
16 recurring rates" column, under the heading "Prices for Offering,"  
17 and to indicate the specified time period within the term of the  
Eschelon Amendment that the McLeod Amendment rates apply  
(e.g., effective as of September 20, 2002), as noted on page 2 of the  
McLeod Amendment.

18 Joint Statement of Undisputed Facts, Ex. A. As written, Eschelon's request would simply  
19 substitute prices from the McLeod agreement into the Eschelon agreement, which would  
20 have resulted in those new prices being effective for the entire term of the Eschelon  
21 agreement, rather than for the term of the McLeod agreement. Notably, the last sentence  
22 of Eschelon's request (as quoted above) identifies a start date for the McLeod rates, but  
23 not the corresponding termination date. Qwest reasonably sought to explore this issue in  
24 its November 8, 2002 letter to Eschelon. Joint Statement of Undisputed Facts, Ex. B.

25 Under the circumstances, Qwest was entirely justified in requesting negotiations, or  
26 in the alternative, requesting additional information from Eschelon, which it did. In  
27 response, Eschelon took an extreme position and refused to clarify its request at all. At  
28 the hearing in this matter, Eschelon's counsel clearly stated that Eschelon's "position was

1 nonnegotiable, if you will. It was, we want the McLeod rates imported into our  
2 agreement.” Transcript of Proceedings (Dec. 30, 2003) (“TR”) at 30:15-17. If this  
3 “nonnegotiable” request were implemented as written, Eschelon would have the benefit of  
4 the McLeod rates without agreeing to all related terms and conditions, especially the  
5 termination date.<sup>2</sup> This is improper under an opt-in request. Requesting carriers are  
6 entitled to opt-in only “upon the same rates, terms, and conditions as those provided in the  
7 agreement” to which the carrier requests opt-in.<sup>3</sup> 47 C.F.R. § 51.809 (2003).

8 In addition, the Recommended Order fails to recognize the significance of  
9 Eschelon’s AIN feature and directory listing package. *See* Recommended Order at 6,  
10 ¶ 31. Prior to the McLeod amendment at issue here, Eschelon and McLeod had different  
11 prices in their interconnection agreements for different service packages. Recommended  
12 Order at 3, ¶ 16. Qwest disagrees with the ALJ’s conclusion that the AIN feature package  
13 is not “legitimately related to the UNE-Star rate.” *Id.* at 6, ¶ 31. Eschelon’s rate including  
14 the AIN features and listings is indisputably higher – Eschelon negotiated with Qwest to  
15 amend the UNE-E arrangement in July of 2001, agreeing to pay a flat rate of \$31.15 for a  
16 UNE-E service package that included additional AIN features and listings. *Id.* at 3, ¶ 16.  
17 *See also* Amendment to Interconnection Agreement between Eschelon and Qwest, July  
18

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19 <sup>2</sup> Although Eschelon now claims that its October 2002 letter unambiguously  
20 requested the rate only until December 31, 2003, Eschelon had maintained that it was  
21 entitled to a longer term for the McLeod pricing up through the time it filed its Complaint  
22 in September 2003. *See* Reply Brief of Eschelon Telecom of Minnesota, Inc. at 2,  
23 (“Eschelon is asking to pay the same rates as McLeod for the same service, for a longer  
24 term than McLeod . . .”) (Exhibit A to Qwest’s Reply in Support of Motion to Dismiss).

25 <sup>3</sup> Qwest also notes that the difference between an opt-in process and a negotiation  
26 process is clearly described on the Qwest website at [http://www.qwest.com/wholesale/](http://www.qwest.com/wholesale/clecs/provisionoptin.html)  
27 [clecs/provisionoptin.html](http://www.qwest.com/wholesale/clecs/provisionoptin.html). This site was developed in cooperation with CLECs, and is  
28 constantly updated after review and concurrence by CLECs participating in the Change  
Management Process. *See also* Qwest’s Arizona SGAT, ¶¶ 1.8.2. Allowing Eschelon to  
bypass this process with an artfully drafted letter designed to avoid legitimately related  
terms and conditions is unfair to Qwest and to other carriers who follow the standard  
procedures.

1 31, 2001, approved by Decision No. 64296, Dec. 28, 2001. For purposes of this case,  
2 however, Qwest's primary argument was that Qwest simply could not determine from  
3 Eschelon's October 2002 letter whether Eschelon wanted basic UNE-Star service at the  
4 McLeod rate, or the enhanced UNE-E service at a different rate.

5 Eschelon's October 2002 letter clearly requested that "the rates from the attached  
6 page" be substituted for Eschelon's previously negotiated rates for the enhanced UNE-E  
7 package. Eschelon's October 2002 letter did not mention the AIN feature package at all.  
8 Moreover, Eschelon did not cite to its then-effective interconnection agreement  
9 amendment and the pricing contained in the July 2001 amendment. Instead, Eschelon  
10 cited back to the November 15, 2000 pricing amendment that was superseded by the July  
11 2001 amendment. Thus, Eschelon avoided addressing the question of how Qwest was  
12 supposed to handle the fact that Eschelon and McLeod did not have the same services at  
13 the same price. The request specified that the rate Eschelon opted into would be the  
14 McLeod \$20.61 rate, and the McLeod rate does not cover the additional cost incurred by  
15 the service package Eschelon was, and is continuing to purchase. This squarely raises the  
16 question of whether Qwest was to implement this request literally by eliminating the  
17 additional AIN feature and directory listing package and giving Eschelon the McLeod  
18 pricing, or whether Eschelon was really seeking a new, lower rate for its UNE-E service  
19 with the additional features included. Qwest asked this question of Eschelon and received  
20 no response until August of 2003, many months after Eschelon's original request.

21 The Recommended Order carries the error further by ordering that Eschelon's  
22 unique, negotiated UNE-E rate be divided into two components – the \$20.61 McLeod rate  
23 plus the \$.35 AIN feature rate. *Id.* at 8, ¶¶ 8-9 & n.1. Eschelon did not have two separate  
24 rates for UNE-Star and AIN features. The \$31.15 rate was the only rate in Eschelon's  
25 agreement. Meanwhile, McLeod paid \$30.80 for UNE-Star service that did not include  
26 the additional features for which Eschelon had negotiated. The Recommended Order's  
27 treatment of the enhanced UNE-E rate as two separate rates shows that the ALJ failed to  
28 recognize the reasons why Qwest could not simply implement Eschelon's purported

1 opt-in request. The fact that the single UNE-E rate is not the same as McLeod's rate again  
2 supports the Qwest position that the final \$20.96 rate was not an opt-in at all, but a  
3 negotiated rate.

4 On identical facts, the Washington State Utilities and Transportation Commission  
5 declined to adopt a similar recommended order from an ALJ, and instead found the  
6 following:

7 27 Eschelon argues that its opt-in request was proper as of  
8 the date it presented the request to Qwest. Qwest responds that the  
9 request was unclear: not only were the dates in question, but the  
10 nature of services provided in the UNE platform package was  
11 different for the two CLECs, and the Eschelon rate included AIN  
12 services that McLeod did not order or receive. The evidence  
13 supports Qwest's contentions. Even at oral argument on review, the  
14 parties made differing contentions about the nature of the services  
15 that McLeod and Eschelon received under their interconnection  
16 agreements, and both parties agree that the Eschelon rate included  
17 features that McLeod did not receive. *It was simply not a*  
18 *ministerial task to implement Eschelon's request*, and Qwest's  
19 request for clarification was reasonable.

20 28 According to the information of record, the first  
21 communication from Eschelon to Qwest that clearly specified what  
22 Eschelon wanted to opt-into is the letter of August 14 in which  
23 Eschelon notified Qwest of its intention to pursue enforcement of its  
24 interconnection agreement. That was the first time that Eschelon  
25 advised Qwest of exactly what opt-in provisions Eschelon wanted,  
26 and to which it was entitled.

27 29 Negotiations of parties must be straightforward and in  
28 good faith. *Here, Qwest's response was prompt and its concerns*  
*were well-founded and expressed in a straightforward way.* We see  
no excessive delay.

Washington State Utilities and Transportation Commission, Docket No. UT-033039, Final  
Order Granting Petition, In Part at 9-10 (Feb. 6, 2004) (emphasis added) (copy provided  
in this docket by Supplemental Citation to Authority, filed Feb. 10, 2004). The  
Washington Commission therefore ordered retroactive credits beginning August 14, 2003.

1 *Id.* at 13. The Washington Commission's analysis was sound and should serve as highly  
2 persuasive authority in this case.

3 In summary, the Recommended Order improperly places the burden of deciphering  
4 what Eschelon intended on Qwest. It should not be Qwest's obligation (or right) to  
5 unilaterally interpret or "fix" an opt-in request that is unclear. Rather, the burden should  
6 be on the carrier seeking opt-in to craft a clear and proper request, and to respond to  
7 Qwest in a timely way when Qwest affirmatively seeks clarification. The Recommended  
8 Order effectively deprives Qwest of any opportunity to assert legitimately related terms  
9 when it receives an opt-in request, or even clarify what terms a requesting CLEC is  
10 actually seeking.

11 **B. Qwest reasonably asked for clarification of Eschelon's opt-in request.**

12 The Recommended Order appears to conclude that Qwest insisted on negotiating  
13 over other terms rather than acting on Eschelon's purported opt-in request. *See*  
14 Recommended Order at 7, ¶ 33. This is factually incorrect, as Qwest's correspondence in  
15 the record clearly shows. Qwest reasonably asked for clarification of Eschelon's opt-in  
16 request, and also suggested negotiations as an alternative. Joint Statement of Undisputed  
17 Facts, Ex. B & D. Eschelon effectively declined both options, preferring to stand on its  
18 initial "nonnegotiable" request and litigate in a series of complaints before various state  
19 utility commissions. Eschelon did not even direct its correspondence to Larry  
20 Christensen, whom Qwest had repeatedly identified as responsible for interconnection  
21 agreements every single time Eschelon contacted Qwest.

22 **C. The termination date of the lower McLeod rate was not the only**  
23 **legitimately related term of the McLeod agreement.**

24 Qwest maintains that opt-in rights under Section 252(i), strictly defined, do not  
25 apply in this case because of the substantial differences in the Eschelon and McLeod  
26 agreements. As noted above, the fact that Qwest could not reasonably have implemented  
27 Eschelon's ambiguous initial rate request in October 2002 makes it unnecessary to reach  
28 this issue, on which the courts have so far offered little guidance. However, if the

1 Commission declines to resolve the dispute on those grounds, Qwest takes specific  
2 exception to the Recommended Order's conclusions regarding legitimately related terms  
3 under Section 252(i). As noted above, the AIN feature and directory listing package was  
4 an important difference between the Eschelon and McLeod agreements, and Section  
5 252(i) does not create a right for a requesting carrier to opt-in to another carrier's  
6 agreement and still receive different services at a different price. See Recommended  
7 Order at 6, ¶ 31.

8 In addition, the Recommended Order only considers the termination date of the  
9 McLeod rate, not the termination date of the McLeod agreement as a whole. In fact, if  
10 Eschelon's request is treated as a strictly proper opt-in, the McLeod amendment clearly  
11 shows that termination of the relationship between Qwest and McLeod was a material part  
12 of the McLeod amendment. See Interconnection Agreement Amendment, Sept. 19, 2002,  
13 Administrative Closure No. 65687 (Mar. 5, 2003). The McLeod amendment specifically  
14 gives advance notice of termination after December 31, 2003. *Id.*

15 Finally, Qwest also notes that the Recommended Order errs in concluding that  
16 volume was not legitimately related to price in the McLeod agreement. Recommended  
17 Order at 6, ¶ 29. The FCC's *First Report & Order In the Matter of Implementation of the*  
18 *Local Competition Provisions in the Telecommunications Act of 1996*, FCC 96-325  
19 ("FCC's First Report & Order") specifically recognized that term and volume  
20 commitments are likely to be relevant to rates:

21 For instance, where an incumbent LEC and a new entrant have agreed  
22 upon a rate contained in a five-year agreement, section 252(i) does not  
23 necessarily entitle a third party to receive the same rate for a three-year  
24 commitment. Similarly, that one carrier has negotiated a volume  
discount on loops does not automatically entitle a third party to obtain  
the same rate for a smaller amount of loops.

25 FCC's First Report & Order, ¶ 15. The fact that Qwest agreed to a particular UNE rate for  
26 carriers with differing volumes at some time in the past does not mean that Qwest must  
27 give identical lower rates for widely differing volumes in the future. The logic of  
28 Paragraph 29 of the Recommended Order would mean that once Qwest had negotiated a



1 particular rate with more than one carrier, Qwest could not negotiate a discount for the  
2 larger volume carriers, no matter how large the difference in volume. Such a ruling, if  
3 applied as precedent, would put Qwest at a serious competitive disadvantage because  
4 Qwest would not be able to counter competitive offers made to its largest customers.

5 **D. Effective date of negotiated amendment between Qwest and Eschelon.**

6 Qwest also notes that paragraph 23 of the Recommended Order states that the  
7 parties entered into a negotiated amendment on September 11, 2003, with new rates  
8 scheduled to begin on October 1, 2003. The amendment was executed on September 29,  
9 2003, and provides that the rate change will be made upon execution. In addition, the  
10 Recommended Order requires Qwest to refund amounts charged in excess of the  
11 requested rate during the effective period of the negotiated amendment. Recommended  
12 Order at 7-8, ¶¶ 7-8 & Order. The amounts charged during the effective period of the  
13 negotiated amendment are not at issue in this case. Qwest has therefore proposed to  
14 amend paragraph 23 of the Findings of Fact, paragraphs 7 and 8 of the Conclusions of  
15 Law, and the language of the Order to reflect these dates.

16 **III. CONCLUSION**

17 For all the reasons set forth above, Qwest requests that the Commission reverse and  
18 modify the Recommended Order as set forth herein and Exhibit A attached hereto.

19 RESPECTFULLY SUBMITTED this 14<sup>th</sup> day of April, 2004.

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22 

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7 14<sup>th</sup> day of April, 2004:

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Dennis D. Ahlers  
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A handwritten signature in dark ink, appearing to read 'D. Ahlers', is written over a horizontal line.

**APPENDIX A**  
**QWEST'S PROPOSED AMENDMENTS TO THE RECOMMENDED ORDER**

**Findings of Fact**

Page 5, ¶ 21

21. By letter dated January 16, 2003, Eschelon informed Qwest that it interpreted Qwest's November 8, 2002, letter as a- stating that in effect Qwest would not agree to Eschelon's request unless Eschelon agreed to adopt all of the terms and conditions in the McLeod agreement, and that Qwest was rejecting Eschelon's opt-in request. Eschelon requested that Qwest explain "how the service that Eschelon would be receiving if it chose to opt-in to the McLeod Amendment as Qwest would allow it, would differ from the service it is receiving today." In addition, Eschelon requested that Qwest specify which terms and conditions in the McLeod agreement would apply to Eschelon should it opt-in to the McLeod Amendment. This response did not significantly clarify Eschelon's rate request.

Page 5, ¶ 22

22. Qwest responded to Eschelon's January 2003 letter by letter dated February 14, 2003. Qwest reiterated its inability to determine whether by its request, Eschelon intended to change the service offering Qwest was providing. Again, Qwest noted that the differences between the McLeod agreement and the Eschelon agreement were readily evident, but Qwest offered to send Eschelon a copy of the relevant documents and again suggested that to pursue opt-in that Eschelon contact Mr. Christensen, its Director of Interconnection Agreements.

Page 5, ¶ 23

23. Eschelon's letter of August 14, 2003, conceding that Eschelon's rate should be \$.35 higher than McLeod's rate, is the first evidence in the record showing that Eschelon made the terms of its rate request reasonably clear to Qwest. On September 14, 2003, Eschelon and Qwest entered into an amendment to their interconnection agreement that reduced Eschelon's rate to \$20.96 per month, consisting of the McLeod rate plus \$.35, for the period from ~~October 1, 2003~~ the date of execution to December 31, 2003. After that date, per the amendment, the Eschelon rate will revert back to the previous rate of \$31.15 per month until the termination date of the Eschelon agreement, December 31, 2005.

Page 6, ¶ 29 – delete

Page 6, ¶ 30

1           30.—29.     The earlier termination date in the McLeod agreement is legitimately  
2 related to the lower UNE-Star rate. Agreeing to a lower rate that terminates on December  
3 31, 2003 is significantly different than locking in the same rate for a period that  
4 terminates December 31, 2005. The proposed termination date in Eschelon's letter of  
5 October 29, 2002 is ambiguous and potentially subject to different interpretations.  
6 Qwest's request for clarification was reasonable under the circumstances.

7  
8 Page 6, ¶ 31 – delete and replace with the following:

9           30.     It is undisputed that at the time of Eschelon's rate request, Eschelon was  
10 paying \$.35 more per line than McLeod because of the additional AIN feature and  
11 directory listing package included in Eschelon's version of UNE-Star. Eschelon's letter  
12 of October 29, 2002 is ambiguous as to the treatment of the additional feature package.  
13 Qwest's request for clarification was reasonable under the circumstances.

14  
15 Page 6-7, ¶ 32 – delete and replace with the following:

16           31.     Because Eschelon's October 29, 2002 letter was ambiguous as to both  
17 termination date and the status of the AIN feature and directory listing package, it is not  
18 necessary to reach the question of whether the McLeod volume requirements were  
19 legitimately related to the lower rates established under the McLeod amendment.

20  
21 Page 7, ¶ 33 – delete and replace with the following:

22           32.     Eschelon's October 29, 2002 rate request was not a proper opt-in within the  
23 meaning of Section 252(i) of the 1996 Act. Because Eschelon's request was ambiguous  
24 as to material terms, implementation of Eschelon's request was not merely a ministerial  
25 task, and further clarification or negotiation was required in order to amend the  
26 interconnection agreement between the parties.

27  
28 Page 7, ¶ 34 – delete and replace with the following:

29           33.     An ILEC should not be permitted to delay implementation of valid opt-in  
30 requests, but a CLEC cannot expect an ILEC to guess at the terms of a vague or  
31 ambiguous opt-in request. The most effective way to balance the interests of an ILEC and  
32 a requesting CLEC is to hold that a requesting CLEC is entitled to the benefits of an opt-  
33 in as of the date that the CLEC makes a clear and specific request in accordance with  
34 reasonable opt-in procedures established by the ILEC.

35  
36 Insert the following additional paragraph:

37           34.     Under the circumstances of this case, Eschelon is entitled to a per-line UNE-  
38 Star rate based on the \$20.61 McLeod rate plus \$.35, for a total monthly UNE-E rate of  
39 \$20.96. This rate shall be effective on August 14, 2003, the date that Eschelon made the

1 terms of its rate request reasonably clear to Qwest, and Qwest shall credit Eschelon any  
2 amount it collected from Eschelon in excess of the \$20.96 rate from August 14, 2003 until  
3 the negotiated amendment between the parties went into effect on or about October 1,  
4 2003.

#### 5 Conclusions of Law

6 Page 7-8, ¶ 7

7 7. The Eschelon ~~opt-in~~ rate request is effective from the date Eschelon  
8 presented a sufficient statement of its request to Qwest, ~~October 29, 2002,~~ August 14,  
9 2003, until the date the negotiated amendment between the parties went into effect,  
10 September 29, 2003. ~~provision is terminated in the McLeod Agreement, December 31,~~  
11 ~~2003.~~

12 Page 8, ¶ 8

13 8. Eschelon is entitled to a refund of any amounts Qwest charged it in excess  
14 of ~~\$20.61~~<sup>4</sup> \$20.96 for UNE-Star for the period ~~October 29, 2002,~~ August 14, 2003 through  
15 the date the negotiated amendment between the parties went into effect, September 29,  
16 2003. ~~December 31, 2003.~~

#### 17 Order

18 IT IS THEREFORE ORDERED that Eschelon is entitled to ~~opt-in to~~ a rate of  
19 \$20.96, based on the \$20.61 McLeod UNE-Star pricing amendment plus an additional  
20 \$.35 for the AIN feature and directory listing package from October 29, 2002, August 14,  
21 2003 to the date the negotiated amendment between the parties went into effect,  
22 September 29, 2003. ~~December 31, 2003.~~

23 IT IS FURTHER ORDERED that within thirty days of the effective date of this  
24 Order, Qwest shall refund any amounts it charged Eschelon for UNE-Star in excess of the  
25 ~~\$20.61~~ \$20.96 rate from ~~October 29, 2002,~~ August 14, 2003 until the date the negotiated  
26 amendment between the parties went into effect, September 29, 2003. ~~December 31,~~  
27 ~~2003.~~

28 PHX/1533998

<sup>4</sup> ~~This amount does not include the \$.35 that Qwest is entitled to charge for AIN features.~~

**EXCEPTIONS  
Routing Sheet**

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Commissioner Kristin Mayes	<i>KM</i>	4-14-04
Commissioner Mike Gleason	<i>MG</i>	4/14/04
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